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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-029, C-570-030]

Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from ArcelorMittal USA LLC, Nucor Corporation, United States Steel Corporation, and AK Steel Corporation, as well as Steel Dynamics, Inc. and California Steel Industries, (collectively, Domestic Producers), the Department of Commerce (the Department) is initiating anti-circumvention inquiries to determine whether imports of certain cold-rolled steel flat products (CRS), which are produced in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel produced in the People's Republic of China (PRC), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CRS from the PRC.

DATES: Effective [Insert the date of the publication of the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: John K. Drury or Victoria Cho, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0195 or (202) 482-5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2015, AK Steel Corporation, ArcelorMittal USA EEC, Nucor Corporation, Steel Dynamics, Inc., and the United States Steel Corporation (collectively, Petitioners) filed petitions seeking the imposition of antidumping and countervailing duties on imports of CRS from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, Russia, and the United Kingdom. Following the Department's final affirmative determinations of dumping and countervailable subsidies,¹ and the U.S. International Trade Commission (ITC)'s finding of material injury,² the Department issued AD and CVD orders on imports of CRS from the PRC.³

On September 22, 2016, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(h), Steel Dynamics, Inc. and California Steel Industries submitted a request for the Department to initiate anti-circumvention inquiries to determine whether producers of CRS in Vietnam are circumventing the *Orders* by exporting to the United States CRS which is completed or assembled in Vietnam using hot-rolled steel (HRS) sourced from the PRC.⁴ On September 27, 2016, ArcelorMittal USA LLC, Nucor Corporation, United States Steel Corporation, and AK Steel Corporation also submitted a request for the Department to initiate anti-circumvention inquiries and issue preliminary determinations of circumvention to

¹ See *Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, FR 81 (May 24, 2016).

² See *Cold-Rolled Steel Flat Products From China and Japan; Determinations*, 81 FR 45305 (July 13, 2016)

³ See *Certain Cold-Rolled Steel Flat Products From Japan and the People's Republic of China: Antidumping Duty Orders*, 81 FR 45956 (July 14, 2016) (*AD Order*); see also *Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Countervailing Duty Order*, 81 FR 45960 (July 14, 2016) (*CVD Order*) (collectively, *Orders*).

⁴ See Letter from Schagrin Associates to the Secretary of Commerce, "*Certain Cold-Rolled Steel Flat Products from China: Request for Circumvention Ruling*," dated September 22, 2016 (Schagrin Request).

suspend liquidation of imports of CRS from Vietnam.⁵ On October 13, 2016, we received comments supporting the allegation from the United Steelworkers.⁶ Domestic Producers request that the Department treat CRS imports from Vietnam as subject merchandise under the scope of the *Orders* and impose cash deposit requirements on all imports of CRS from Vietnam.

On October 17, 2016, we received comments objecting to the allegation from Metallia U.S.A., LLC, Metallia, A Division of Hartree Partners, LP, Nippon Steel and Sumiken Bussan Americas Inc., Mitsui & Co. (U.S.A.), Inc., and Marubeni-Itochu Steel America Inc. (MISA).⁷ Also on October 17, 2016, we received comments objecting to the allegation from Minmetals, Inc. (Minmetals).⁸ On October 17, 2016, we also received comments objecting to the allegation from POSCO-Vietnam Co., Ltd. (POSCO Vietnam).⁹ On October 21, 2016, we received comments objecting to the allegation from China Steel Sumikin Vietnam Joint Stock Company.¹⁰ Also on October 26, 2016, we received comments objecting to the allegation from Summit Global Trading, a Subsidiary of Sumitomo Corporation of Americas (Sumitomo).¹¹ On October 28, 2016, we received comments objecting to the allegation from thyssenkrupp Materials NA,

⁵ See Letter from Kelley Drye & Warren LLP to the Secretary of Commerce, “Certain Cold-Rolled Steel Flat Products From the People’s Republic of China – Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930,” dated September 27, 2016 (Kelley Drye Request).

⁶ See Letter from United Steelworkers to the Secretary of Commerce, “Certain Cold-Rolled Steel Flat Products from the People's Republic of China,” dated October 13, 2016.

⁷ See Letter from Morris, Manning & Martin, LLP to the Secretary of Commerce, “Certain Cold-Rolled Steel Flat Products and Corrosion-Resistant Steel Products from the People's Republic of China: Response to Request for Anti-Circumvention Inquiry,” dated October 17, 2016.

⁸ See Letter from Minmetals, Inc. to the Secretary of Commerce, dated October 17, 2016.

⁹ See Letter from Arnold and Porter, LLP to the Secretary of Commerce, “Cold-Rolled Steel Flat Products from China: Response to Petitioners’ Circumvention Allegation,” dated October 17, 2016 (POSCO Vietnam Submission).

¹⁰ See Letter from Mowry & Grimson, PLLC and Sidley Austin LLP to the Secretary of Commerce, “Certain Corrosion-Resistant Steel Products from China – Response to Petitioners’ Circumvention Allegations,” dated October 20, 2016.

¹¹ See Letter from Sandler, Travis, and Rosenberg, P.A. to the Secretary of Commerce, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Response to Request for Anti-Circumvention Inquiry,” dated October 26, 2016.

Inc. (thyssenkrupp).¹² On October 31, 2016, we also received comments objecting to the allegation on behalf of Hoa Sen Group (HSG)¹³ and Maruichi Sun Steel Joint Stock Company (Maruichi).¹⁴ On November 1, 2016, we received comments objecting to the allegation from behalf of from Vietnam Competition Authority.¹⁵

Scope of the Orders

The products covered by the orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other nonmetallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling

¹² See Letter from Crowell and Moring, LLP to the Secretary of Commerce, “Certain Corrosion-Resistant and Cold-Rolled Steel Products from the People’s Republic of China: Comments Opposing Petitioners’ Circumvention Allegations,” dated October 28, 2016.

¹³ See Letter from Curtis, Mallet-Prevost, Colt & Mosle, LLP to the Secretary of Commerce, “Opposition to Request for Anti-Circumvention Inquiry Certain Corrosion-Resistant Steel Products and Cold-Rolled Steel Flat Products from the People’s Republic of China,” dated October 31, 2016.

¹⁴ See Letter from Curtis, Mallet-Prevost, Colt & Mosle, LLP to the Secretary of Commerce, “Opposition to Request for Anti-Circumvention Inquiry Certain Corrosion-Resistant Steel Products and Cold-Rolled Steel Flat Products from the People’s Republic of China,” dated October 31, 2016.

¹⁵ See the Letter from the Vietnam Competition Authority to the Secretary of Commerce, “Certain Corrosion-Resistant Steel Products from China; Certain Cold-Rolled Steel Flat Products from China – Opposition to Initiation of Anticircumvention Proceedings,” dated November 1, 2016.

process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with nonrectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of the orders are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or

- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). If steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of

the orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of the orders:

- Ball bearing steels;¹⁶
- Tool steels;¹⁷
- Silico-manganese steel;¹⁸
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S.

Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.¹⁹

• Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.²⁰

¹⁶ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹⁷ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹⁸ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

¹⁹ *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

²⁰ *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss."

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the orders may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the orders is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiries

NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

These anti-circumvention inquiries cover CRS exported from Vietnam produced from HRS exported from the PRC.

Initiation of Anti-Circumvention Inquiries

Section 781(b)(1) of the Act provides that the Department may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting an anti-circumvention inquiry, under section 781(b)(1) of the Act, the Department relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping or countervailing duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, Domestic Producers provided evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

Domestic Producers claim that CRS exported to the United States is the same class or kind as that covered by the *Orders* in these inquiries.²¹ Domestic Producers provided evidence

²¹ See Schagrin Request, at 8; Kelley Drye Request, at 8. See also sections 781(b)(1)(A)(i) and (iii) of the Act.

to show that the merchandise from Vietnam enters the United States under the same tariff classification as subject merchandise.²²

B. Completion of Merchandise in a Foreign Country

Domestic Producers note that section 781(b)(1)(B)(ii) of the Act requires that “the Department must also determine whether, prior to importation into the United States, the merchandise in the third country is completed from merchandise produced in the country subject to the antidumping or countervailing duty order.”²³ Domestic Producers presented evidence showing after the publication of the preliminary affirmative CVD determination in December 2015, how the imports of CRS from Vietnam to the United States more than tripled than the previous two years combined. Additionally, Domestic Producers provide evidence that no capacity currently exists in Vietnam to produce HRS and, thus, they contend any CRS manufactured in Vietnam must use imported HRS.²⁴ Domestic Producers also provide information reflecting that imports into the United States of CRS from the PRC significantly decreased after the imposition of the *Orders*, and imports into the United States of CRS from Vietnam, as well as imports into Vietnam of Chinese HRS, also increased significantly.²⁵ Finally, Domestic Producers state that Minmetals, a U.S. trading company, currently has arrangements to ship HRS from the PRC to Vietnam and convert the HRS to CRS for export to the United States with the purpose of evading the *Orders*.²⁶

C. Minor or Insignificant Process

²² See Kelley Drye Request, at Attachment 1.

²³ *Id.*, at 8.

²⁴ See Schagrin Request, at 10; see also Kelley Drye Request, at 8-9.

²⁵ See Schagrin Request, at 11-14; see also Kelley Drye Request, at 9-10.

²⁶ See Schagrin Request, at 15 and Exhibit 10.

Domestic Producers maintain that the process for completing CRS from HRS is minor or insignificant. Under section 781(b)(2) of the Act, the Department considers five factors to determine whether the process of assembly or completion is minor or insignificant. Domestic Producers allege that the production of HRS in the PRC, which is subsequently further processed into CRS in Vietnam, comprises the majority of the value associated with the merchandise imported into the United States, and that the processing of HRS into CRS in Vietnam adds relatively little value.

(1) Level of Investment

Domestic Producers contend that the level of investment necessary to construct a factory which can produce CRS from HRS in Vietnam is insignificant. In support of its contention, Domestic Producers compare the investment necessary to install a re-rolling facility with the investment necessary to produce HRS using a fully-integrated production process for melting iron and making steel.²⁷ Domestic Producers estimate that the investment necessary to construct a re-rolling facility in Vietnam that uses HRS substrate to produce CRS would be between \$28 million at \$70 million.²⁸ In contrast, Domestic Producers estimate that the investment necessary to construct a fully integrated steel production facility, including a blast furnace and basic oxygen furnace, in the PRC would be between \$295 million and \$10.1 billion.²⁹ Domestic Producers also argue that using investment levels in the PRC for a basic steel making, including a blast furnace and basic oxygen furnace, as opposed to an electric arc furnace, is appropriate as

²⁷ See Schagrin Request, at 16-17; *see also* Kelley Drye Request, at 11-13.

²⁸ See Schagrin Request, at 17; *see also* Kelley Drye Request, at 12.

²⁹ See Schagrin Request, at 16; *see also* Kelley Drye Request, at 12 and Attachment 9.

approximately 90 percent of the steel production in the PRC comes from fully integrated steel mills.³⁰

(2) Level of Research and Development

Domestic Producers assert that the level of research and development in Vietnam is either minimal or non-existent. Domestic Producers state that Vietnam is importing technology from other sources, rather than developing its own technology.³¹ As an example of the importation of technology into Vietnam, Domestic Producers provided evidence that “Dong A, a Vietnamese steel company, recently announced that it is installing European and Japanese equipment in a new facility that includes a pickling line and a cold-rolling mill.”³²

(3) Nature of Production Process

According to Domestic Producers, the production process undertaken by Vietnamese producers of CRS is less complex than steelmaking, and minimal in nature.³³ Citing to a report from the ITC,³⁴ Domestic Producers describe the process to produce HRS as consisting of three distinct states: melting and refining, casting molten steel into semi-finished forms, and hot-rolling the semi-finished forms into HRS.³⁵ In contrast, Domestic Producers provide information indicating that the production of CRS from HRS involves only cleaning and pickling, rolling, annealing, and tempering.³⁶

(4) Extent of Production Facilities in Vietnam

³⁰ See Kelley Drye Request, at 12.

³¹ See Schagrin Request, at 17-18; see also Kelley Drye Request at 13.

³² See Kelley Drye Request at 13 and Attachment 11.

³³ See Schagrin Request, at 18; see also Kelley Drye Request at 14.

³⁴ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and The United Kingdom*, Inv. Nos. 70t-TA-545-547 and 731-TA-1291-1297, USITC Pub.4570 (October 2015) (Preliminary) at I-19. Domestic Producers attached the report as Attachment 12.

³⁵ See Kelley Drye Request, at 14-16 and Attachment 12.

³⁶ *Id.*, at 17. Domestic Producers cite to *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and The United Kingdom*, Inv. Nos. 70t-TA-545-547 and 731-TA-1291-1297, USITC Pub.4570 (Oct.2015) (Preliminary) at I-21 in support of their description of the CRS production process.

Domestic Producers provide information indicating that production facilities in Vietnam are more limited compared to facilities in the PRC.³⁷ As noted above, Domestic Producers maintain that Vietnam has no HRS capacity. Domestic Producers claim that Vietnam has fewer than a dozen large producers of flat steel products. Moreover, Domestic Producers indicate that Vietnam has limited production facilities that would allow for production of CRS to support the significant increase of imports into the United States from Vietnam.³⁸

(5) Value of Processing in Vietnam

Domestic Producers assert that producing HRS in the PRC accounts for a large percentage of the total value of CRS that is produced in Vietnam using HRS from the PRC. Using information from the recent CRS investigation by the ITC, Domestic Producers state that the price of HRS is consistently between 80 percent and 90 percent of the value of CRS.³⁹ Using another approach, focusing solely on the cost of production in Vietnam, Domestic Producers estimate that the cost of manufacture for the CRS operations value added in Vietnam is less than ten percent.⁴⁰ As noted above, Domestic Producers argue that the vast majority of the processing and value of CRS comes from HRS. The value of processing CRS in Vietnam is a minor part of the total cost of manufacture, unlikely to exceed 20 percent of the total value. Thus, the value of the merchandise produced in China is estimated to be at least 80 percent of the total value of the merchandise shipped to the United States.⁴¹

D. Additional Factors To Consider in Determining Whether Action Is Necessary

³⁷ See Schagrin Request, at 18. Domestic Producers cite to report on the state of the steel industry in Vietnam in support of their statements. See Nozomu Kawabata, “The Vietnamese Iron and Steel Industry in Transition to a Market Economy – Attainments and Challenges,” at 14, 20, & 35 (May, 2016) (Tohoku Economics Research Group, Tohoku University, Discussion Paper No. 349) (Kawabata Report), attached as Exhibit 4 to the Request.

³⁸ See Kelley Drye Request, at 17-18.

³⁹ See Schagrin Request, at 18-19.

⁴⁰ See Kelley Drye Request, at 18-19 and Attachment 14.

⁴¹ See Kelley Drye Request, at 19.

Section 781(b)(3) of the Act directs the Department to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the order, such as: “(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise ... is affiliated with the person who uses the merchandise... to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise... have increased after the initiation of the investigation which resulted in the issuance of such order or finding.”

(1) Pattern of Trade

Domestic Producers provide information reflecting that at the time the petitions were filed for the original investigations of CRS from the PRC, Vietnam was not a source of U.S. imports of CRS in 2014. Domestic Producers provide information reflecting imports of CRS from Vietnam to the United States through July 2015 were low.⁴² However, subsequent to the preliminary injury determination by the ITC, the final quarter of 2015 saw increased imports of CRS from Vietnam to the United States.⁴³ Domestic Producers provide information demonstrating that after the Department’s preliminary affirmative CVD determination for CRS from the PRC in December 2015, imports of CRS from Vietnam into the United States surged dramatically.⁴⁴ Domestic Producers further provide evidence that imports of CRS from the PRC to the United States decreased substantially over the same time period.⁴⁵ No other factual information on the record contradicts this claim.

(2) Affiliation

⁴² See Kelley Drye Request, at 19-20 and Attachment 1.

⁴³ *Id.*, at 20

⁴⁴ *Id.*

⁴⁵ *Id.*, at 5-6.

Domestic Producers have not provided any allegation of affiliation between producers of HRS in the PRC and producers of CRS in Vietnam.

(3) Increase of HRS Shipments from the PRC to Vietnam After Initiations of the AD and CVD Investigations of CRS from the PRC

Domestic Producers presented evidence indicating that imports of HRS from the PRC to Vietnam have increased since the initiation of the investigations of CRS from the PRC.⁴⁶ No other factual information on the record contradicts this claim.

Analysis of the Allegations

Based on our analysis of Domestic Producers anti-circumvention allegations and the information provided therein, the Department determines that anti-circumvention inquiries of the AD and CVD orders on CRS from the PRC are warranted.

With regard to whether the merchandise from Vietnam is of the same class or kind as the merchandise produced in the PRC, Domestic Producers presented information to the Department indicating that, pursuant to section 781(b)(1)(A) of the Act, the merchandise being produced in and/or exported from Vietnam is of the same class or kind as CRS produced in the PRC, which is subject to the *Orders*.⁴⁷ Consequently, the Department finds that Domestic Producers provided sufficient information in their requests regarding the class or kind of merchandise to support the initiation of these anti-circumvention inquiries.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B) of the Act, Domestic Producers also presented information to the Department indicating that the CRS exported from Vietnam to the United States is produced in

⁴⁶ See Schagrin Request, at 11-14; *see also* Kelley Drye Request, at 21 and Attachment 3.

⁴⁷ See Schagrin Request, at 9; *see also* Kelly Dry Request, at 8 and Attachment 1.

Vietnam using HRS from the PRC.⁴⁸ We find that the information presented by Domestic Producers regarding this criterion supports its request to initiate these anti-circumvention inquiries.

The Department finds that Domestic Producers sufficiently addressed the factors described in section 781(b)(1)(C) and 781(b)(2) of the Act regarding whether the process of assembly or completion of CRS in Vietnam is minor or insignificant. In particular, information in Domestic Producers' submission indicates that: (1) The level of investment in re-rolling facilities is minimal when compared with the level of investment for basic steel making facilities; (2) there is little or no research and development taking place in Vietnam; (3) the CRS production processes involve the simple processing of HRS from a country subject to the *Orders*; (4) the CRS production facilities in Vietnam are more limited compared to facilities in the PRC; and (5) the value of the processing performed in Vietnam is a small proportion of the value of the CRS imported into the United States, as the production of HRS in the PRC accounts for 80 to 90 percent of the value of finished CRS.

With respect to the value of the merchandise produced in the PRC, pursuant to section 781(b)(1)(D) of the Act, Domestic Producers relied on published sources, a simulated cost structure for producing CRS in Vietnam, and arguments in the “minor or insignificant process” portion of its anti-circumvention allegation to indicate that the value of the key material , HRS, produced in the PRC may be significant relative to the total value of the CRS exported to the United States. We find that this information adequately meets the requirements of this factor, as discussed above, for the purposes of initiating these anti-circumvention inquiries.

⁴⁸ See Schagrin Request, at 6 and 11-18 and Exhibits 1-2, 4-5, 7 and 13; *see also* Kelly Dry Request, at 8-11 and Attachments 1-5.

Finally, with respect to the additional factors listed under section 781(b)(3) of the Act, we find that Domestic Producers presented evidence indicating that shipments of CRS from Vietnam to the United States increased since the imposition of the *Orders* and that shipments of HRS from the PRC to Vietnam also increased since the *Orders* took effect, further supporting initiation of these anti-circumvention inquiries. Accordingly, we are initiating a formal anti-circumvention inquiry concerning the AD and CVD Orders on CRS from the PRC, pursuant to section 781(b) of the Act.

In connection with these anti-circumvention inquiries, in order to determine, 1) the extent to which PRC-sourced HRS is further processed into CRS in Vietnam before shipment to the United States, 2) the extent to which a country-wide finding applicable to all exports might be warranted, as alleged by Domestic Producers, and 3) whether the process of turning PRC-sourced HRS into CRS is minor or insignificant, the Department intends to issue questionnaires to solicit information from interested parties. The Department intends to issue questionnaires to solicit information from the Vietnamese producers and exporters concerning their shipments of CRS to the United States and the origin of the imported HRS being processed into CRS. A company's failure to respond completely to the Department's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

While we believe sufficient factual information has been submitted by Domestic Producers supporting their request for inquiries, we do not find that the record supports the simultaneous issuance of a preliminary ruling. Such inquiries are by their nature typically complicated and can require information regarding production in both the country subject to the order and the third country completing the product. As noted above, the Department intends to

request additional information regarding the statutory criteria to determine whether shipments of CRS from Vietnam are circumventing the AD and CVD orders on CRS from the PRC. Thus, with further development of the record required before a preliminary ruling can be issued, the Department does not find it appropriate to issue a preliminary ruling at this time.

Notification to Interested Parties

In accordance with 19 CFR 351.225(e), the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise. Accordingly, the Department will notify by mail all parties on the Department's scope service list of the initiation of these anti-circumvention inquiries. In addition, in accordance with 19 CFR 351.225(f)(1)(i) and (ii), in this notice of initiation issued under 19 CFR 351.225(e), we have included a description of the product that is the subject of these anti-circumvention inquiries (*i.e.*, CRS that contains the characteristics as provided in the scope of the *Orders*) and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry, as provided above.

In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry. The Department will establish a schedule for questionnaires and comments on the issues. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), the Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with 19 CFR 351.225(f).

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

November 4, 2016.

Date

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